

50 CFR Part 17

**Endangered and Threatened Wildlife
and Plants; Determination That
Sclerocactus mesae-verdae Is a
Threatened Species**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Sclerocactus mesae-verdae* (Mesa Verde cactus), a native plant of New Mexico and Colorado, to be a Threatened species. The plants are in demand by cactus collectors despite the fact that wild specimens usually die in cultivation, and removal by commercial

suppliers and private collectors continue to cause a decline in the natural populations. Populations also have been damaged by highway construction and right-of-way development for overhead transmission lines. Off-road vehicle activity is another current threat. This action will extend to this plant the protection provided by the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: November 29, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C., 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant taxa to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered by the Smithsonian Institution to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the *Federal Register* (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within, as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the *Federal Register* (41 FR 24523-24572) to determine approximately 1,700 vascular plant taxa to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plants was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the above mentioned *Federal Register* publication.

Sclerocactus mesae-verdae was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. A public hearing on this proposal was held on July 22, 1976, in El Segundo, California. A second public hearing was held on July 12, 1979, in Albuquerque, New Mexico for five New Mexico cacti proposed as Endangered species, including this *Sclerocactus*.

In the June 24, 1977, *Federal Register* the Service published a final rule (42 FR 32373-32381, codified at 50 CFR Part 17) detailing the permit regulations to protect Endangered and Threatened plant species. The rule established prohibitions and permit procedures to

grant exception to the prohibitions under certain circumstances.

The Department has determined that this listing rule does not meet the criteria for significance in the Department Regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

In keeping with the general intent of Section 4(b)(1)(C) of the Act, a summary of all comments and recommendations received is published in the *Federal Register* prior to adding any plant species to the List of Endangered and Threatened Wildlife and Plants.

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened Plants and their protection and regulation. These comments are summarized in the April 26, 1978, *Federal Register* publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916). Some of these comments had addressed the general problems of conservation of cacti.

Additionally, many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Sections 9(a)(2) and 10 of the Act. These comments are summarized in the June 24, 1977, *Federal Register* final rule (42 FR 32373-32381) on plant trade prohibitions and permit provisions. Several persons at the recent public hearing in New Mexico indicated lack of familiarity with these prohibitions and permit provisions. Requests for copies of these final trade regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

With the July 2, 1979, *Federal Register* notice (44 FR 38611) for the second public hearing on certain proposed southwestern cacti, comments on the species were again solicited, with an official comment period of July 2 through July 23, 1979. The Governors of New Mexico, Colorado and Arizona were notified of the proposal to list *Sclerocactus mesae-verdae* as an Endangered species. No reply regarding the species has been received from the states of Colorado and Arizona.

Although the Governor of New Mexico himself submitted no comment on the proposed action, the New Mexico Natural Resources Department recommends the species be listed as Endangered, without Critical Habitat, indicating collectors are the most serious threat. The New Mexico Department of Agriculture briefly reported on the survival status of the cactus, and also indicated specific areas for the species should not be designated. It indicated that before listing the cactus as Endangered, the possible inadequacy of the laws and their implementation should be considered, and that listing might increase threats to the species. The Service is aware that listing under the Act might be harmful; however, in balance, it considers that providing the provisions of the Act to this species is more likely to prove beneficial than allowing continued inadequate management for the cactus.

Six other written comments were received concerning this species. The Navajo Nation, and the U.S. Forest Service, Region 3, recommend the cactus be listed as Endangered. The Southwest Region Office of the Bureau of Reclamation indicated concern that there was a lack of supporting data for the listing, and a lack of detailed information on Critical Habitat for the cactus. Extensive information on the cactus is on file and available in the Service's Albuquerque Regional Office and Washington Office of Endangered Species; it is not prudent to determine Critical Habitat for the cactus because it would increase threats to it, as explained further below. Two professional botanists and the Chairman of the Conservation Committee of the Cactus and Succulent Society of America supported the listing.

The Service has determined that this species should be listed as Threatened rather than Endangered because of its total population size and range, and because wider knowledge that field-collected specimens do not do well in cultivation should discourage taking and increase efforts to propagate the species horticulturally.

At the July 12, 1979, public hearing in Albuquerque, New Mexico, three persons knowledgeable on New Mexico cacti expressed support for listing this cactus as Threatened rather than Endangered; none opposed the listing.

When the plant regulations implementing Sections 9(a)(2) and 10 of the Act were proposed (41 FR 22915), many comments questioned the lack of any taking prohibition, and some suggested that the lack of such a prohibition may be a reason for keeping information on the localities of some

Hawaiian honeycreepers, the principal native nectar-feeding birds, are presently extirpated in the native range of *Kokia cookei*, and this may have contributed to its decline. Seed set and seed viability have been low in cultivated specimens of this species, possibly as a result of repeated inbreeding and concomitant loss of genetic variability.

Effect of the Rulemaking

Section 7(a) of the Act, as amended, provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for interagency cooperation were published on January 4, 1978, in the *Federal Register* (43 FR 870-876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. The present rule requires Federal agencies to satisfy these statutory and regulatory obligations with respect to *Kokia cookei*. Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered and Threatened species of plants are found at § 17.61-17.63 (42 FR 32373-32381).

With respect to this plant, all pertinent prohibitions of Section 9(a)(2) of the Act, as implemented by 50 CFR Part 17.61 would apply. These prohibitions, in general, make it illegal for any person subject to the jurisdiction of the United States to import or export Endangered plants; deliver, receive, carry, transport, or ship them in interstate commerce in the course of a commercial activity; or to sell or offer them for sale in interstate or foreign commerce.

Section 10 of the Act and the regulations referred to above provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Such permits involving Endangered species are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Effect Internationally

In addition to the protection provided by the Act, the Service will review this plant to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention or whether it should be considered under other appropriate international agreements.

National Environmental Policy Act

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C)

of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

At the time any such regulation [to determine a species to be Endangered or Threatened] is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Kokia cookei is presently known only from a single specimen in cultivation and tissue culture maintained in a laboratory. Because it has been extirpated from its natural range, it is not prudent at this time to designate an area of Critical Habitat for this species. Critical Habitat may be determined at a future date in connection with eventual efforts to re-introduce the species on Molokai.

The primary author of this rule is Dr. John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235-1975).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order, by family, genus, and species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Malvaceae—Mallow family:						
<i>Kokia cookei</i>	Cooke's kokio	U.S.A. (HI)	Entire	E	70	NA

Dated: October 23, 1979.

Robert S. Cook,
Deputy Director, Fish and Wildlife Service.

[FR Doc. 79-33573 Filed 10-29-79 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination That *Sclerocactus mesae-verdae* Is a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Sclerocactus mesae-verdae* (Mesa Verde cactus), a native plant of New Mexico and Colorado, to be a Threatened species. The plants are in demand by cactus collectors despite the fact that wild specimens usually die in cultivation, and removal by commercial

taxa secret. When these regulations were made final on June 24, 1977, the summary of comments included the following (42 FR 32376):

The "taking" of plants is not prohibited by Section 9(a)(2) of the Act and, therefore, cannot be included within these regulations. However, the "taking" of plants is sometimes regulated by local, State, or Federal agencies under other legislation, and the Federal responsibilities under Section 7 apply if taking of individual plants would jeopardize the continued existence of the Endangered or Threatened species.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Sclerocactus mesae-verdae* (Boissevain ex Hill et Salisbury) L. Benson (mesa Verde cactus; synonyms: *Coloradoa mesae-verdae*, *Echinocactus mesae-verdae*, *Pediocactus mesae-verdae*) is likely to become in danger of extinction in the foreseeable future throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Sclerocactus mesae-verdae* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The plant is known in southwestern Colorado from a possible location in Montrose County and primarily in Montezuma County, and from adjacent New Mexico in San Juan County. A 1963 report from northeastern Arizona has never been documented. The cactus is found in barren areas of the desert grasslands ecosystem. Populations have been damaged by highway construction, and right-of-way development for overhead transmission lines. Off-road vehicle activity is a current threat. The proposed Bureau of Reclamation pipeline for the Gallup-Navajo Indian Water Supply Project would threaten less than one percent of the individuals known. Uranium exploration is proposed south of the majority of the known populations, that is to the south of Shiprock, New Mexico.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* This species' major threat remains repeated taking by commercial and private collectors, despite the fact that it does poorly in cultivation. Wild plants have been offered for sale nationally and internationally.

3. *Disease or predation* (including grazing). An insect larva hollows out and kills significant numbers of plants in some populations. Cattle, sheep and

horses graze in the general area, but it is not known whether they cause trampling damage to the species.

4. *The inadequacy of existing regulatory mechanisms.* Colorado has no law which protects this cactus. New Mexico State Law, Chapter 76, Article 8, Sections 1-4, affords limited protection within 400 yards of any highway to all plants, and mentions that all species of *Sclerocactus* are among the protected plants. The protection includes limited prohibitions against destruction, mutilation or removal of living plants (except seeds) on State or private land. Some populations of this species may be within 400 yards along roads in the Four Corners area. New Mexico State Law, Chapter 76, Article 5, Section 21, requires an application to sell collected wild plants, and designation of the wild source area.

In addition, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention only regulates export of the cactus and, therefore, does not regulate interstate or intrastate trade in the cactus, or habitat destruction.

Although the Bureau of Land Management regulations (43 CFR 6010.2) prohibit the removal, destruction, and disturbance of vegetative resources unless such activities are specifically allowed or authorized, they do not address this cactus directly. Indian Reservations have the authority through tribal resolutions to restrict the taking of plants on their lands as well. The Endangered Species Act, as amended, will now offer additional protection for the species.

5. *Other natural or man-made factors affecting its continued existence.* The cactus appears to be generally restricted to a particular soil type in the area. This restriction has made it difficult to maintain in cultivation, and resulted in repeated removals of wild plants to fulfill hobby interests in the species.

Effect of the Rulemaking

Section 7(a) of the Act, as amended in 1978, provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency

action") does not jeopardize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the Federal Register (43 FR 870-876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species. New rules implementing the 1978 Amendments to Section 7 of the Act are being prepared now by the Service.

Endangered and Threatened species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all such species. The principal regulations which pertain to Threatened plant species are found at §§ 17.71 and 17.72 (43 FR 32380-32381). All provisions of Section 9(a)(2) of the Act, as implemented by § 17.71, will apply. With respect to any species of plant listed as Threatened, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate or foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the Federal Register of June 24, 1977 (42 FR 32373-32381, 50 CFR Part 17), provide for the issuance of permits, under certain circumstances, to carry out otherwise prohibited activities involving Threatened plants, such as trade in specimens of cultivated origin.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export of this plant. The Service will review whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western

Hemisphere or other appropriate international agreements.

National Environmental Policy Act

A final Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Critical Habitat

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

At the time any such regulation [to determine a species to be an Endangered or Threatened species] is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

Sclerocactus mesae-verdae has been and is threatened by taking, and the taking of plants is not directly prohibited by the Endangered Species Act of 1973. The State of New Mexico and the Bureau of Land Management would have increased burdens to

enforce their general prohibitions on removal of plants. Indian tribal authority also has not halted collecting. Publication of Critical Habitat maps would make this species more vulnerable to taking and therefore it would not be prudent to determine Critical Habitat.

Sclerocactus mesae-verdae was proposed for listing as an Endangered species on June 16, 1976 (41 FR 24536). Since it has been determined not to be prudent to designate Critical Habitat for this species at this time, and all other listing requirements of the Act have been satisfied, the Service now proceeds with the final rule to determine this species to be Threatened under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 884).

The primary author of this rule is Dr. Bruce MacBryde, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Add, in alphabetical order by family, genus, and species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus family:						
<i>Sclerocactus mesa-verdae</i>	Mesa Verde cactus.	U.S.A. (CO, NM)	Entire	T	71	NA

Dated: October 24, 1979.

Robert S. Cook,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 79-33574 Filed 10-29-79; 8:45 am]

BILLING CODE 4310-55-M